

Supreme Court, U. S.

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Supreme Court of the United States

OCTOBER TERM, 1976

No. **76-1131**

**GEORGE PERKINS ECHOLS and
INTERNATIONAL THEATRES UNLIMITED, INC.,
Petitioners,**

versus

**UNITED STATES OF AMERICA,
Respondent.**

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

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Petitioners**

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**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976**

No. _____

GEORGE PERKINS ECHOLS and
INTERNATIONAL THEATRES UNLIMITED, INC.,
Petitioners,

versus

UNITED STATES OF AMERICA,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Petitioners, George Perkins Echols and International Theatres Unlimited, Inc., pray that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on November 22, 1976.

**OPINIONS DELIVERED IN
THE COURTS BELOW**

The opinion of the United States Court of Appeals for the Fifth Circuit, dated and entered November 22,

1976 and reported in ____ F.2d 88 (Appendix "A"). Rehearing was denied Petitioners in Order dated and entered December 20, 1976 (Appendix "B").

The Judgment of the United States District Court for the Eastern District of Louisiana, dismissing the superceding indictment brought against Petitioners, dated and entered on March 17, 1976 and its opinion dated March 9, 1976 and entered March 10, 1976 (Appendix "C"). This case is reported in 413 F.Supp. 12 (1976).

The Judgment of the same District Court dismissing the original indictments on which the Government did not file a superceding indictment dated December 2, 1975 opinion dated November 25, 1975 (both entered December 3, 1975) as amended by Order dated December 11, 1975 and entered December 12, 1975 (Appendix "D"). This decision is reported in 413 F.Supp. 9 (1975).

JURISDICTION

Petitioners ask this Honorable Court to review and reverse the Court of Appeals' Judgment of November 22, 1976 (Appendix "A") which, on grounds of practical exigency and judicial notice, reversed the Judgments of the United States District Court for the Eastern District of Louisiana (Appendix "C" and "D"). Rehearing was denied Petitioners by Order dated and entered December 20, 1976 (Appendix "B"). This Honorable Court granted a thirty (30) day extension of time for Petitioners to file this Petition or until February 18, 1977 by Order dated January 6, 1977 (Appendix "E").

The jurisdiction of this Honorable Court to review the decision of the Court of Appeals for the Fifth Circuit is conferred by the provisions of 28 U.S.C. §1254(1) allowing this Court to review any matter, final or interlocutory, pending in the Court of Appeals.

QUESTIONS PRESENTED

1. Whether the Judgment of the Court of Appeals reverses all federal jurisprudence which has heretofore limited persons authorized in grand jury proceedings to those enumerated in Fed. R. Crim. P. 6(d), 18 U.S.C.
2. Whether the Judgment of the Court of Appeals will permit the U.S. Attorney to ignore Rule 6(d) in presenting evidence to a grand jury.
3. Whether the decisions of this Honorable Court on interpretation of legislative statutes were followed in the Judgment of the Court of Appeals.
4. Whether the decisions of this Honorable Court requiring an appellate court to refrain from reversing findings of fact by a District Court in a criminal matter were followed in the Judgment of the Court of Appeals.

STATUTE INVOLVED

This case involves Fed. R. Crim. P. 6(d), 18 U.S.C. — Appendix (1970) Vol. 4, p. 4485 which reads:

(d) Who May Be Present. Attorneys for the government, the witness under examina-

tion, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

STATEMENT

Petitioners, George Perkins Echols and International Theatres Unlimited, Inc. were originally charged with violations of 18 U.S.C. §1462 (1970) (interstate transportation of obscene material); and 18 U.S.C. §2 (1970) (principals) under six indictments (Appendix "F") in connection with seven 35mm motion pictures. In securing the indictments, the U.S. Attorney had utilized the services of a union movie projectionist, Lloyd Montreuil, to show the films to the grand jury.

Petitioners moved to dismiss the indictments because unauthorized persons, including the union projectionist, were present in the grand jury room in violation of Federal Rules of Criminal Procedure rule 6(d). After an evidentiary hearing in which it was shown that the U.S. Attorney's office could operate the movie projector (Appendix "G", pp. 51a-68a), the Honorable R. Blake West dismissed the indictments (see opinion, Appendix "D").

In anticipation of this adverse decision¹, the Government secured a superceding indictment in

¹ A special agent of the FBI was also present during a part of the time the first grand jury viewed the films (see Appendix "D", reasons for first decision of the District Court, pp. 19a-23a).

relation to three of the movies (Appendix "H") between the date of the hearing and the Order of Dismissal. In securing the superceding indictment, the Government again made use of Mr. Montreuil's talents in presenting the films to the grand jury. In an apparent effort to avoid the effect of the anticipated ruling, however, the U.S. Attorney swore Mr. Montreuil as a "witness" (and to secrecy², see transcript of the second grand jury, Appendix "I").

Petitioners moved a second time to dismiss the indictment. The stipulation of facts (Appendix "J") of all counsel made the evidentiary hearing (Appendix "G", pp. 46a-69a) and therefore, the findings of fact of the first Opinion (Appendix "D") the foundation for the second decision (Appendix "C") rendered by Judge Palmieri who also dismissed the indictment (Appendix "C").

On appeal, the Court of Appeals reversed the factual and legal determinations of the District Court. The Court essentially held that "practical exigencies" required that Rule 6(d) be interpreted to allow a union projectionist to show films to the grand jury as a "witness".

REASONS FOR GRANTING THE WRIT

The Court of Appeals Has Reversed 80 Years of Federal Jurisprudence In Judicially Expanding Rule 6(d)

Notwithstanding any ultimate decision if there were a trial on the merits of the indictment against

² Fed. R. Crim. P. 3(e). 18 U.S.C. — Appendix (1970) precludes "witnesses" from being sworn to secrecy.

Petitioners, the Judgment of the Court of Appeals reverses eighty years of federal jurisprudence forbidding unauthorized persons in the grand jury room, as further shown in Fed. R. Crim. P. 6(d), 18 U.S.C. (1970). The decisions of the District Court were founded on this jurisprudence (see footnote 3 of the first Opinion, Appendix "D", p. 19a; footnote 5 of the second opinion, Appendix "C", p. 15a).

Jurisprudence denying expansion of Rule 6(d) is both numerous and consistent.³ See *United States v. Edgerton*, 80 F. 374 (D. Mont. 1897); *United States v. Heinze*, 177 F. 770, (S.D.N.Y. 1910); *Latham v. United States*, 226 F. 420 (5th Cir. 1915); *United States v. Goldman*, 28 F.2d 424 (D. Conn. 1928); *Shushan v. United States*, 117 F.2d 110 (5th Cir. 1941), cert. denied 313 U.S. 574, 61 S.Ct. 1085 (1941); *United States v. Brumfield*, 85 F.Supp. 696 (W.D. La. 1949); *United States v. Carper*, 116 F.Supp. 817 (D.D.C. 1953); *United States v. Borys*, 169 F.Supp. 366 (D. Alas. 1959); *Paroutin v. United States*, 297 F.Supp. 137 (E.D.N.Y. 1968); *United States v. Rath*, 406 F.2d 757 (6th Cir. 1969) cert. denied 394 U.S. 920, 89 S.Ct. 1196 (1969); *United States v. Bowdach*, 324 F.Supp. 123 (S.D.Fla. 1971); *United States v. Boyle*, 338 F.Supp. 1028 (D.D.C. 1972); *United States v. Daneals*, 370 F.Supp. 1289 (W.D.N.Y. 1974).

The issue being presented is whether the mandate of Rule 6(d) is to be deviated from as a matter of

³ The only conflict ever appearing to counsel's knowledge is in jurisprudence occurring with regard to the presence of stenographers around the turn of the century. See *Latham v. United States*, 226 F. 420 (5th Cir. 1915) and *United States v. Simmons*, 46 F. 65 (2nd Cir. 1891).

"convenience" to the U.S. Attorney. The District Court resolved this issue as follows (Appendix "D", p. 23a):

" In regard to Mr. Montreal, the government argues that the U.S. Attorney's office does not own, and does not know how to operate a 35mm projector. However, when the presentation of evidence to a Grand Jury requires the use of expensive equipment, and a few extra minutes to allow a person whose presence is authorized by F.R.Crim.P. 6(d) to learn how to operate that equipment, the government is not entitled to lower the standard of secrecy the courts have traditionally exacted of Grand Jury proceeding, simply because the government is unable to meet one or both of the requirements.

The government has further argued that Mr. Montreal had to be present because the union Mr. Montreal belongs to requires a union projectionist to operate, as well as set up, the projector. This argument is without merit, as it is inconceivable that the Federal Rules of Criminal Procedure should be disregarded in favor of the provision of a collective bargaining agreement."

The Court of Appeals found practical exigencies required the union projectionist be a "witness" notwithstanding that at no time was Mr. Montreuil before the grand jury for any reason other than to operate the movie projector (see transcript of both grand jury

proceedings, Appendix "G", pp. 48a-68a and Appendix "I", pp. 74a-77a).

This Honorable Court has not decided any case concerning Rule 6(d) to the knowledge of Petitioners. This case presents an important question of federal law which has not been, but should be, settled by this Honorable Court within the intendment of Rule 19 (1) (b) of the Rules of this Honorable Court. Its supervision is now sought to correct an opinion by the Court of Appeals erroneously departing from the usual course of judicial proceedings by permitting the U.S. Attorney to make a union projectionist a witness solely to facilitate the U.S. Attorney, not the grand jury. The case effectively reverses the jurisprudence on point with far-reaching implications.

The Judgment Of The Court of Appeals Will Permit The U.S. Attorney To Ignore Rule 6(d) In Presenting Evidence To A Grand Jury.

The Court of Appeals' opinion provides the U.S. Attorney an easy way to avoid compliance with Rule 6(d) anytime any problem arises in presenting evidence to the grand jury. Accordingly, the opinion is not limited to situations involving allegedly obscene movie films but extends to all criminal matters.

Practical exigencies have heretofore been rejected by the courts in a variety of situations which the U.S. Attorney would have had otherwise. Thus, an expert could not assist the U.S. Attorney by listening to the testimony of and propounding questions to other witnesses in *United States v. Edgerton*, 80 F. 374 (D.Mont.

1897); an accountant who was not an attorney could not be appointed a special assistant to the U.S. Attorney in presenting evidence to a grand jury in *United States v. Heinze*, 117 F. 770 (S.D.N.Y. 1910); counsel for the Selective Service System could not assist the U.S. Attorney, even though a large number of cases were being presented to the grand jury in a very short period in *United States v. Daneals*, 370 F.Supp. 1289 (W.D.N.Y. 1974); an attorney not duly authorized under law as a special assistant could not assist the U.S. Attorney in presenting evidence to the grand jury in *United States v. Goldman*, 28 F.2d 424 (D.Conn. 1928); a mother could not sit with her seven year old daughter who was testifying before the grand jury in *United States v. Borys*, 169 F.Supp. 366 (D.Alas. 1959); U.S. Marshals could not sit in the grand jury room to guard defendants who were testifying before the grand jury in *United States v. Carper*, 116 F.Supp. 817 (D.D.C. 1953); an F.B.I. agent could not operate a sophisticated tape recording device for witnesses while in the grand jury room in *United States v. Bowdach*, 324 F.Supp. 123 (S.D.Fla. 1971).

It is submitted that, unless this Honorable Court reverses the Court of Appeals, the fundamental protection afforded all persons by Rule 6(d) will be subverted. If union projectionists or other technical or expert assistants to the U.S. Attorney are to be authorized to be present during grand jury proceedings, it is for Congress, not the judiciary, to amend the rule.

The Decisions Of This Court Were Not Followed in Interpreting The Federal Statute.

It is well settled that, in seeking the proper construction of a statute, a Court must look primarily to the ex-

pressed intention of the legislature contained in the statute itself or in its legislative history. Rule 6(d) does not, in itself, authorize the U.S. Attorney to engage the assistance of a union projectionist, as it does interpreters, stenographers (or operators of recording devices) when needed to record evidence. The Supreme Court Advisory Committee which drew the rule did not expect or intend expansion of its language N.Y.U. Sch. L. — Institute on Fed. Rules Cr. Proc. — Proceedings Vol. VI (1946), pp. 153-154 quoted in part in *United States v. Carper*, 116 F.Supp. 817, 819-20 (D.D.C. 1953). The Court of Appeals has, in this case, attempted to "second guess" the legislators' intent on the basis of "practical exigency", a method disavowed by this Honorable Court. See, e.g. *Addison v. Holly Hill Fruit Products*, 322 U.S. 607, 617, 64 S.Ct. 1215, 1221 (1944).

The Decisions Of This Court Were Not Followed By The Court Of Appeals In Reversing Through Judicial Notice The Findings Of Fact Of The District Court.

The Court of Appeals, by judicial notice, reversed a finding of fact of the District Court which was supported by evidence in a criminal proceeding. Specifically, the District Court found the use of a union projectionist was, for the Government, a matter of convenience (Appendix "D"). Overturning this finding is contrary to *Glasser v. United States*, 315 U.S. 60, 62 S.Ct. 457 (1942) and *United States v. Johnson*, 327 U.S. 106, 66 S.Ct. 464 (1946).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

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APPENDICES

1a

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

October Term, 1975

No. 76-1953

D.C. Docket No. CR-75-359 "H"

**UNITED STATES OF AMERICA,
Plaintiff-Appellant,**

versus

**GEORGE P. ECHOLS, ET AL.,
Defendants-Appellees.**

**Appeal from the United States District Court for the
Eastern District of Louisiana**

**Before AINSWORTH and RONEY, Circuit Judges.
and ALLGOOD, District Judge.**

JUDGMENT

**This cause came on to be heard on the transcript of
the record from the United States District Court for the
Eastern District of Louisiana, and was argued by
counsel;**

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the order of the District Court appealed from, in this cause be, and the same is hereby, reversed and that this cause be and the same is hereby remanded to the said District Court for further proceedings in accordance with the opinion of this Court.

November 22, 1976

Issued as Mandate:

UNITED STATES of America,
Plaintiff-Appellant,

versus

George Perkins ECHOLS et al.,
Defendants-Appellees.

No. 76-1953.

United States Court of Appeals,
Fifth Circuit.

Nov. 22, 1976.

**Appeal from the United States District Court for the
Eastern District of Louisiana.**

Before AINSWORTH and RONEY, Circuit Judges,
and ALLGOOD, District Judge.

RONEY, Circuit Judge:

The sole question presented on this appeal is whether a movie projectionist, who is sworn as a witness before the grand jury and then shows films to it, is a "witness under examination," and therefore an authorized person before the grand jury, in accordance with Rule 6(d) of the Federal Rules of Criminal Procedure. The district court held he was not and, following a *per se* rule that excludes unauthorized persons from the grand jury room, dismissed the indictment. We reverse on the ground that the projectionist was a "witness under examination" within the meaning of Rule 6(d).

Defendants were originally charged under four indictments with the interstate transportation of obscene material in violation of 18 U.S.C.A. §§ 2, 1462. In securing these initial indictments, the Government employed a union movie projectionist to show seven allegedly obscene 35mm films to the grand jury. The projectionist was not sworn as a witness. The district court granted defendants' motion to dismiss the indictment on the ground that an unauthorized person was present in the grand jury room in violation of Rule 6(d), Fed.R.Crim.P. *United States v. Echols*, 413 F.Supp. 8 (E.D.La. 1975) (Memorandum and Order per West, J.).

The Government, apparently anticipating this adverse decision, secured a superseding indictment between the date of the hearing and order of dismissal

with respect to three of the movies. The Government employed the same projectionist, but this time placed him under oath. The projectionist testified that he was a licensed projectionist, that he knew how to operate a 35mm projector, and that he was going to show the three films in their entirety. After showing all three films to the jurors and the two assistant United States attorneys, he testified that he knew the proceedings were secret, and that he had shown all the reels of the films.

The defendants filed a motion to dismiss this second indictment. The district court granted the dismissal on the ground that the projectionist was not a "witness under examination" within the meaning of Rule 6(d), Fed.R.Crim.P., and therefore unauthorized to be present before the grand jury. *United States v. Echols*, 413 F.Supp. 12 (E.D.La., 1976) (Memorandum and Order per Palmieri, J.). The court stated that the "government cannot extend the limit imposed by F.R.Crim.P. 6(d) simply by swearing in, as a witness, a person the government feels should be present." *Id.* at 14. From this adverse ruling the Government has appealed.

In the Federal Rules of Criminal Procedure governing the grand jury, Rule 6(d) provides:

(d) **Who May Be Present.** Attorneys for the government, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while

the grand jury is deliberating or voting.
(Emphasis added).

By limiting those persons who may be present before the grand jury, Rule 6(d) serves the dual purpose of safeguarding the secrecy and privacy of the grand jury proceedings and of protecting the grand jurors from the possibility of undue influence or intimidation from unauthorized persons. To effectuate these purposes, courts generally have indicated that this Rule should be strictly construed. See, e. g., *Latham v. United States*, 226 F. 420 (5th Cir. 1915). In *Latham* this Court held that the presence of an unauthorized person results in a *per se* invalidity of the indictment. No showing of prejudice is required to quash an indictment secured with the presence of unauthorized persons in the grand jury room.

Latham, however, involved the presence of a stenographer who took notes of the testimony of the witnesses before the grand jury. Under the rules at that time, stenographers were not authorized to be present in the grand jury room. Furthermore, the stenographer neither was sworn nor purported to be a "witness under examination." This Court recognized that an act of Congress was required to change this Rule, and eventually Congress made such a change.

Similarly, the other cases cited by the defendants for the *per se* rule involved the simultaneous presence of a testifying witness and the unauthorized person, unlike the instant case. *United States v. Daneals*, 370 F.Supp. 1289 (W.D.N.Y. 1974) (regional counsel for selective service system present with testifying

witnesses); *United States v. Bowdach*, 324 F.Supp. 123 (S.D.Fla.1971) (FBI agent recalled to play tape recordings to refresh memory of testifying witness); *United States v. Borys*, 169 F.Supp. 366 (D.Alaska 1959) (mother of child present while child testified); *United States v. Carper*, 116 F.Supp. 817 (D.D.C.1953) (three U.S. deputy marshals present while grand jury was hearing testimony); *United States v. Goldman*, 28 F.2d 424 (D.Conn.1928) (stenographer, not permitted by rules at that time, present with testifying witnesses); *United States v. Edgerton*, 80 F. 374 (D.Mont. 1897) (expert witness remained while another witness was examined and asked questions of him). Only in *Edgerton* and *Bowdach* had the unauthorized person been sworn as a witness at any time during the grand jury proceedings. No case cited by the parties or uncovered in our independent research deals with the situation where an individual, sworn as a witness and appearing alone before the grand jury, was deemed to be an unauthorized person under Rule 6(d), except in the instant case and the subsequent case of *United States v. Echols*, Crim. No. 76-271 (E.D.La., filed June 14, 1976) (Memorandum Opinion per Boyle, J.) (movie projectionist, an employee of defendant, was sworn as a witness and gave relevant testimony on films. After adjournment, he returned to show the films to the grand jury. The court held that he no longer served his function as a witness and granted defendant's motion to dismiss).

To adhere to a strict construction of Rule 6(d), the inquiry must focus on whether the projectionist was a "witness under examination." The Rules nowhere define this phrase. The decision must turn on the func-

tion of the grand jury, the scope of its investigation, and the purpose of the movie projectionist's presence before the grand jury.

The grand jury has traditionally been accorded broad investigative powers in order for it to pursue effectively the performance of its duties. *United States v. Dionisio*, 410 U.S. 1, 17, 93 S.Ct. 764, 35 L.Ed.2d 67 (1973). The grand jury best serves society's interests by carrying out a thorough and extensive investigation of every available clue, and by examining all witnesses in every proper way to determine if a crime has been committed. The grand jury's sources of information are widely drawn, and the validity of an indictment is not affected by the character of the evidence considered. *United States v. Calandra*, 414 U.S. 338, 344-345, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974); *United States v. Parr*, 516 F.2d 458, 469 (5th Cir. 1975). Accordingly, the grand jury has been permitted to inspect physical evidence as well as to hear verbal testimony. See, e. g., *United States v. Dionisio*, *supra* (voice exemplars); *In re Lewis*, 501 F.2d 418 (9th Cir. 1974), cert. denied, 420 U.S. 913, 95 S.Ct. 1106, 43 L.Ed.2d 386 (1975) (tape recordings and documents); *Application of Rodgers*, 359 F.Supp. 576 (E.D.N.Y. 1973) (photographs); *United States v. Bailey*, 332 F.Supp. 1351 (N.D.Ill.1971) (handwriting exemplars).

To effectuate further the broad investigative powers of the grand jury, it is imperative that evidence be presented in an understandable and meaningful fashion. This principle is recognized by the provision in the Rule which permits interpreters to be present when the witness under examination cannot speak

English. Annot., 4 A.L.R.2d 392, 431 (1949). Likewise, expert witnesses may present oral testimony and physical demonstrations to a grand jury. See *United States v. Bailey, supra*, at 1357. Logic dictates that, when it is necessary for the grand jury to examine evidence which can only be presented through the use of complicated machinery, Rule 6(d) must encompass those persons with the requisite skills to operate such machines and to give testimony concerning their operations. To interpret this Rule otherwise would insulate from the grand jury the meaningful production of evidence.

In this case, in order for the grand jurors to indict the defendants for the interstate transportation of obscene films, it was essential that they examine the films in the manner in which they are used. This required some understanding of motion picture equipment and the operation of a 35mm movie projector. This Court can take judicial notice of the fact that a 35mm projector is a complicated and expensive piece of machinery. The projectionist was an expert. He was available for any inquiry the grand jury might wish to make about the equipment and the technical aspects of the use of these films. It was not necessary for the projectionist to present oral evidence of a testimonial nature. But see *United States v. Glassman*, Crim. No. 75-691 (E.D.La., filed June 24, 1976) (Memorandum Opinion per Boyle, J.). Where a qualified projectionist is duly sworn as a witness available for grand jury questions, shows films as instructed, and is not present during the presentation of other evidence or during the deliberations, we hold that he is a proper "witness under examination" within the meaning of Rule 6(d). We

do not perceive any greater potential for invasion of the secrecy of the proceedings or opportunity for undue influence than is present with any other expert witness under examination.

We need not decide whether the swearing in of a witness would be sufficient alone to render him a "witness under examination." Cf. *In re Investigation by the January 1952 Grand Jury*, 102 F.Supp. 911 (W.D.Pa.), aff'd, 196 F.2d 217 (3d Cir.), cert. denied, 344 U.S. 823, 73 S.Ct. 22, 97 L.Ed. 641 (1952). In this case the projectionist played a meaningful role in the development of relevant evidence. Had there been any indication in the record that the projectionist was brought before the grand jury in bad faith or as a sham witness, our decision might be to the contrary. See *United States v. Tupler*, Crim. No. LV-75-75, RDF (D.Nev., filed April 19, 1976) (Memorandum and Order). We do not, however, rule on that supposition.

In ruling that the movie projectionist was properly before the grand jury as a "witness under examination," we do not purport to "extend the limit imposed by F.R.Crim.P. 6(d)." *United States v. Echols*, 413 F.Supp. 12, 14 (E.D.La., 1976) (Memorandum and Order per Palmieri, J.). Rather, we read the rule as accommodating the practical exigency of making all relevant information available to the grand jury in a meaningful and understandable manner. The Order of the district court is reversed and the case remanded for further proceedings.

REVERSED AND REMANDED.

10a

APPENDIX B

**IN THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT**

No. 76-1953

**UNITED STATES OF AMERICA,
Plaintiff-Appellant,**

versus

**GEORGE P. ECHOLS, ET AL.,
Defendants-Appellees.**

**Appeal from the United States District Court for the
Eastern District of Louisiana**

ON PETITION FOR REHEARING

(DECEMBER 20, 1976)

**Before AINSWORTH and RONEY, Circuit Judges, and
ALLGOOD, District Judge.**

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

11a

ENTERED FOR THE COURT:

**/s/ PAUL H. RONEY
United States Circuit Judge**

APPENDIX C

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

vs

**GEORGE P. ECHOLS, ALLEN P. DUPLECHIN
and INTERNATIONAL THEATERS UNLIMITED,
INC., d/b/a Toulouse Cinema**

CRIMINAL ACTION

NO. 75-359

SECTION "H"

JUDGMENT

Considering the written order of the Court on file herein, wherein the Court granted defendants' motion to dismiss;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, GEORGE P. ECHOLS, ALLEN P. DUPLECHIN and INTERNATIONAL THEATERS UNLIMITED, INC. d/b/a Toulouse Cinema, and against the UNITED STATES

OF AMERICA, dismissing all counts contained in the indictment as to said defendants.

IT IS FURTHER ORDERED that the said defendants be, and they are hereby DISCHARGED.

New Orleans, Louisiana, this 17th day of March, 1976.

/s/ R. BLAKE WEST
UNITED STATES
DISTRICT JUDGE

[Filed: Mar. 17, 1976]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA
VERSUS
GEORGE P. ECHOLS ET ALS

CRIMINAL ACTION
NO. 75-359
SECTION "H"

ORDER

This is a simple matter involving an alleged evasion of F.R.Crim. P. 6(d) by the government in their prosecution of the defendants for the alleged violation of 18 U.S.C. 1462 and 2.

F.R.Crim. P. 6(d) provides:

"Attorneys for the government, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting." (Emphasis ours)

The defendants contend that a projectionist, employed by the government to operate a 35 mm projector, was not a witness under examination, regardless of the fact that he was sworn as a witness.

The government, on the other hand, contends that, because the projectionist was sworn as a witness, he was properly present while the grand jury was in session.

For the following reasons the defendants' motion to dismiss the indictment is GRANTED¹:

I. FACTS

Mr. Montreuil, the projectionist, did not testify as a fact or expert witness; indeed, it is quite clear that Mr. Montreuil had no knowledge of any fact material or

¹ The Court has previously dismissed an indictment after deciding a similar question by its order of November 25, 1975, in Criminal Action Nos. 75-359, 75-362, 75-363, and 75-364, all of which involved the same facts and defendants. The same defendants were again indicted by superceding indictment, after another grand jury had viewed the subject films.

relevant to the captioned matter. Mr. Montreuil's testimony did nothing more than establish the fact that he was a union projectionist.² Mr. Montreuil, therefore, was no more of a witness than the U. S. attorney or the court stenographer.³

II. THE LAW

In *U. S. v. Bowdach*, 324 F.Supp. 123 (S.D.Fla. 1971) the indictment against the defendant was dismissed because an F.B.I. agent, who had previously testified as a witness, was brought in again to operate a tape recording device. In that case, as in the present case, the government contended that it was necessary to have the person present, because only he was capable of operating the recording device. The facts are clear that in *Bowdach*, as in the present case, no testimony was taken while the tape was being played, or the film projected, respectively.

Many other cases which support the decision reached in *Bowdach* exist.⁴

² See transcript attached as Appendix "A".

³ Both a U.S. attorney and a court stenographer are specifically designated as proper parties present while a grand jury is in session by F.R.Crim.P. 6(d).

⁴ See *United States v. Daneals*, 370 F.Supp. 1289 (W.D.N.Y., 1974); *United States v. Isaacs*, 347 F.Supp. 743 (N.D.Ill., 1972); *United States v. Boyle*, 338 F.Supp. 1028 (D.C., 1972); *United States v. Borys*, 169 F.Supp. 366 (Alas., 1959); *United States v. Carper*, 116 F.Supp. 817 (D.C., 1953); *United States v. Goldman*, 28 F.2d 424 (D.Conn., 1928); *Latham v. United States*, 226 F.2d 420 (C.5, 1915); *United States v. Edgerton*, 80 F. 374 (Mont., 1897).

III. RULING

Hence, it is clear that, since Mr. Montreuil was not a witness under examination, he was not a proper party under F.R.Crim.P. 6(d). The government cannot extend the limit imposed by F.R.Crim.P. 6(d) simply by swearing in, as a witness, a person the government feels should be present. Indeed if that were the law, F.R.Crim.P. 6(d) would be without substance. The fact that Mr. Montreuil was sworn to secrecy is of no effect, since the specificities prescribed by F.R.Crim.P. 6(d) are not judicially extendable.⁵ That is to say, if there is a need to allow the operator of a device which will be used to present evidence to a grand jury to be present while a grand jury is in session, it is incumbent upon Congress, not the courts, to change the existing rule, as was done in the case of stenographers and interpreters.

Therefore, IT IS ORDERED that the defendants' motion to dismiss be, and the same is hereby, GRANTED.

The motion to dismiss having been GRANTED, the other motions filed by the defendants are hereby DISMISSED AS MOOT.

New Orleans, Louisiana, this 4th day of March, 1976.

/s/ EDWARD S. PALMIERI
UNITED STATES DISTRICT
JUDGE

[Filed: Mar. 9, 1976]

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA
VERSUS
GEORGE P. ECHOLS ET ALS

CRIMINAL ACTION
NO. 75-359
SECTION "H"

UNITED STATES OF AMERICA
VERSUS
GEORGE P. ECHOLS ET ALS

CRIMINAL ACTION
NO. 75-362
SECTION "C"

UNITED STATES OF AMERICA
VERSUS
GEORGE P. ECHOLS ET ALS

CRIMINAL ACTION
NO. 75-363
SECTION "E"

UNITED STATES OF AMERICA
VERSUS
GEORGE P. ECHOLS ET ALS

CRIMINAL ACTION
NO. 75-364
SECTION "H"

MEMORANDUM AND ORDER

The defendants in this matter have moved to dismiss the indictment because unauthorized persons were allegedly in the presence of the Grand Jury which indicted the defendants while that Grand Jury was in session.

An evidentiary hearing was held in this matter on November 12, 1975. After reviewing the facts adduced at that hearing, it is the opinion of the Court that the

defendants' motion to dismiss should be granted. Reasons follow.

I. THE LAW

The Fifth Amendment guarantees that "[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . ." The purpose of a Grand Jury indictment has historically been to charge individuals with serious crimes and to protect them from false accusations brought by others.¹ "The Grand Jury is a safeguard designed to protect the reputation of the accused, to avert the stigma of prosecution unless there is reasonable ground for proceeding."²

In order to accomplish this result, Grand Jury proceedings have always been guarded with secrecy. *Wigmore on Evidence*, Vol. VIII, §2360-63, pp. 728-41. Undoubtedly, secrecy is the purpose for F. R. Crim. P. 6(d) which provides:

"Attorneys for the government, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting."

¹ See *United States v. DeCavalcante*, 440 F.2d 1264 (C.3, 1971), 62 Harv. L. Rev. 111, 114 (1948).

² 62 Harv. L. Rev. 111, 114 (1948).

An old case dealing with the subject is *United States v. Edgerton*, 80 F.374 (D.C.Mont., 1897). In that case, an expert witness was not only permitted to remain after he had testified before the grand jury, but was also permitted to propound questions to subsequent witnesses. The Government argued in that case, as it does in the present case, that the defendants were not prejudiced by these actions. The Court rejected this contention and stated that the common law rule excluding all but the witness and the United States Attorney from the grand jury sessions admitted no exceptions. Potentials for prejudice were listed that could occur by the presence of an expert witness. The Court logically concluded that, if the presence of an unauthorized person is excused, it would be impossible to set the bounds to prevent abuse. This statement comes as close as possible to a *per se* rule requiring dismissal, once the presence of an unauthorized person is determined.

Latham v. United States, 226 F. 420 (C.5, 1915) is another case often cited in support of a *per se* rule regarding dismissal because of the presence of an unauthorized person in the grand jury room while the grand jury is in session. In that case, a stenographer, who was also a clerk for the United States Attorney's Office, was allowed to be present and to record testimony. The stenographer had taken an oath to keep secret the grand jury proceedings. The Court, nevertheless, dismissed the indictment. Addressing itself to the question of whether the defendant was required to show prejudice, the Court stated that the unauthorized presence was a matter of substance, not procedure, and the presence, if unauthorized, was illegal.

F. R. Crim. P. 6(d) is a legislative expansion of the common law rules as to who could be present by adding, in 1933, authority for stenographers and, in 1966, the operator of a recording device used to record testimony. The Congress has narrowly defined those persons who may be present while the Grand Jury is in session. This limitation applies equally to witnesses, including potential defendants, the Grand Jury, and the government.

The Courts have uniformly held that the presence of an unauthorized person in a Grand Jury session vitiates the indictment, even when such a person is present only in order to play back what is on a tape recording device.³

The pivotal issue which the Court must decide in the present case, therefore, is: Was anyone, not authorized by the provision of F. R. Crim. P. 6(d) present while the Grand Jury was in session?⁴

II. THE FACTS

A. THE SETTING

On May 20, 1975, Magistrate James D. Carriere, who was then the First Assistant United States Attorney

³ See *United States v. Bowdach*, 324 F.Supp. 123 (S.D.Fla., 1971); also see *United States v. Daneals*, 370 F.Supp. 1289 (W.D.N.Y., 1974); *United States v. Isaacs*, 347 F.Supp. 743 (N.D.Ill., 1872); *United States v. Boyle*, 338 F.Supp. 1028 (D.C., 1872); *United States v. Borys*, 169 F.Supp. 366 (Alas., 1959); *United States v. Carper*, 116 F.Supp. 817 (D.C., 1953); *United States v. Goldman*, 28 F.2d 424 (D.Conn., 1928); *Latham v. United States*, 226 F.2d 420 (C.5, 1915); *United States v. Edgerton*, 80 F. 374 (Mont., 1897).

⁴ No allegation is made that unauthorized persons were present during deliberation or voting of the Grand Jury.

arranged for use of the Canal-LaSalle Hotel viewing room so that seven allegedly pornographic movies could be viewed by the then sitting Grand Jury.⁵

The viewing room was rectangular in shape and contained thirty-seven (37) seats. The screen was at one end and the projection room was, naturally, at the other. Although the projection room was separate from the screening room, it was in effect a room within the screening room; that is, it was necessary to come into the rear of the screening room in order to get into the projection room. The door to the projection room which led into the screening room was always left open.⁶

B. THE CAST OF CHARACTERS

Those persons whose presence has been established but not put at issue are the members of the Grand Jury, Magistrate James D. Carriere, the First Assistant United States Attorney, John Musser, Assistant United States Attorney, and Robert Habans, also an Assistant United States Attorney.⁷

Those persons the defendants claim were present but unauthorized are Mr. Lloyd Montreal, the union projectionist, and Mr. Richard Bacon, an agent of the F.B.I. who had been given custody of the films seized by the federal government.⁸

⁵ Testimony of Magistrate James D. Carriere.

⁶ Testimony of Mr. Lloyd Montreal, the union projectionist who operated the 35 mm projector. See also diagram of screening room, Exhibit D-1.

⁷ Testimony of Magistrate James D. Carriere.

⁸ Testimony of Magistrate James D. Carriere.

C. SCRIPT

1. Mr. Lloyd Montreal

Mr. Montreal arrived at the screening room at approximately 7:30 a. m., May 20, 1975. At about 8:00 a. m. that morning approximately four men in suits, one of whom Mr. Montreal identified as Agent Bacon, entered the screening room and began to prepare for the showing of the film. Between 9:30 a. m. and 10:00 a. m. Mr. Montreal began to screen the films.

Although it was impossible for Mr. Montreal to overhear what members of the Grand Jury were saying when the projector was running, Mr. Montreal testified that it would have been possible to have overheard what the Grand Jury was saying when the projector was not running, because the Grand Jury was sitting to the rear of the screening room near the projecting room.

Furthermore, it was Mr. Montreal's testimony that he did go into the screening room while the Grand Jury was viewing the films, but only once, and then only to adjust the air conditioning control, which control was in the screening room behind the screen.

Finally, and most importantly, Mr. Montreal testified that it was entirely possible to instruct someone in a short period of time how to operate a 35 mm projector, despite the fact that it is a complicated and delicate machine.

2. Agent Richard Bacon

Agent Bacon had previously testified before the Grand Jury in regard to the seizure of the films. After arriving that morning Agent Bacon remained in the screening room some fifteen to thirty minutes during the screening of the films.

Agent Bacon testified he did so in order to satisfy his own curiosity as to how the 35 mm projector operated.⁹ Later, around noon, Agent Bacon returned to check on the progress of the screening, only to find that everyone except Mr. Montreal had gone to lunch. Apparently satisfied that the films he was responsible for were safe, Agent Bacon again left and did not return until approximately 3:00 p. m. that day. Agent Bacon testified that he arrived while the last reel of "Little Sisters", the last film to be shown that day was being put on the projector and that he remained inside the screening room until that reel had been shown to the Grand Jury.

III. RULING

The facts as set forth above make it clear that Mr. Montreal and Agent Bacon, persons unauthorized by F. R. Crim. P. 6(d), were present while the Grand Jury was in session.¹⁰

⁹ Agent Bacon testified that he had organized all the films in the order they were to be shown prior to the time the screening had begun.

¹⁰ If Mr. Montreal's presence in the projection room, or Agent Bacon's presence going from the projection room outside through the screening room are not sufficient, Mr. Montreal's walking into the screening room to adjust the air conditioning is, or all three instances of unauthorized presence together are, sufficient to find a violation of F. R. Crim. P. 6(d).

In regard to Agent Bacon, it is clear that he was not a witness at the time he was present in the screening room. Despite this fact, Agent Bacon had what appears to have been unsupervised and unlimited access to the room in which the Grand Jury proceeding was being held. Such a violation of F. R. Crim. P. 6(d), even though it appears not have been prejudicial in the present case, has the potential to undermine the entire Grand Jury system, and for this reason alone the defendants' motion should be granted.

In regard to Mr. Montreal, the government argues that the U. S. Attorney's office does not own, and does not know how to operate, a 35 mm projector. However, when the presentation of evidence to a Grand Jury requires the use of expensive equipment, and a few extra minutes to allow a person whose presence is authorized by F. R. Crim. P. 6(d) to learn how to operate that equipment, the government is not entitled to lower the standard of secrecy the courts have traditionally exacted of Grand Jury proceeding, simply because the government is unable to meet one or both of the requirements.

The government has further argued that Mr. Montreal had to be present because the union Mr. Montreal belongs to requires a union projectionist to operate, as well as set up, the projector. This argument is without merit, as it is inconceivable that the Federal Rules of Criminal Procedure should be disregarded in favor of the provision of a collective bargaining agreement.

Finally, the Court feels that the resources of the United States government are sufficient to fund any

expenses the United States Attorney's office may incur in presenting evidence to a Grand Jury in the manner provided for by the Federal Rules of Criminal Procedure. Indeed, a holding to the contrary would open the floodgates to a flaunting of the Federal Rules of Criminal Procedure, as circumstances which would well serve as extenuating exist in many cases presented to the Grand Jury.

It has come to the attention of the Court that the government has dismissed the original indictment in Criminal Action No. 75-359 and superceded that indictment with a new indictment. For this reason the defendants' motion is moot as to Criminal Action No. 75-359, and as such dismissed. However, as to Criminal Actions No. 75-362, 75-363, and 75-364, IT IS HEREBY ORDERED that the motions of George P. Echols, International Theatres Unlimited, Inc., and Allen P. Duplechin to dismiss be, and the same are hereby, GRANTED.

New Orleans, Louisiana, this 25th day of November, 1975.

/s/ R. BLAKE WEST
UNITED STATES
DISTRICT JUDGE

[Filed: Nov. 26, 1975]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

VS

GEORGE P. ECHOLS, ALLEN P. DUPLECHIN,
INTERNATIONAL THEATERS UNLIMITED, INC.
d/b/a Toulouse Cinema, d/b/a Paris Theater,
ARTHUR WEISBERG and GAIL FILMS
DISTRIBUTORS, INC.

CRIMINAL ACTION

NO. 75-364

SECTION "H"

JUDGMENT

This cause came on for hearing before the Court on a former day on motion of defendants, George P. Echols, Allen P. Duplechin and International Theatres Unlimited, Inc. d/b/a Toulouse Cinema, d/b/a Paris Theater to dismiss, and after hearing argument by respective counsel, the Court took the matter under submission.

Now, therefore, considering the written reasons of the Court on file herein, wherein the Court granted said motion;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, GEORGE P. ECHOLS, ALLEN P. DUPLECHIN and INTERNATIONAL THEATERS UNLIMITED d/b/a Toulouse Cinema, d/b/a Paris Theater, and against the UNITED STATES OF AMERICA, acquitting the said defendants on all counts contained in the indictment.

IT IS FURTHER ORDERED that the said defendants be, and they are hereby DISCHARGED.

26a

New Orleans, Louisiana, this 2d day of December,
1975.

/s/ R. BLAKE WEST
UNITED STATES
DISTRICT JUDGE

[Filed: Dec. 2, 1975]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA
vs.

**CRIMINAL ACTION
NO. 75-284**

GEORGE P. ECHOLS, ALLEN P. DUPLECHIN,
INTERNATIONAL THEATERS UNLIMITED, INC.
d/b/a Toulouse Cinema, d/b/a Paris Theater

ORDER CORRECTING JUDGMENT

It appearing to the Court that the judgment entered herein on December 3, 1975 was incorrect:

IT IS ORDERED, that paragraph three of said judgment be corrected to read as follows:

"IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, GEORGE P. ECHOLS, ALLEN P. DUPLECHIN and INTERNATIONAL THEATERS UNLIMITED, INC.,

27a

d/b/a Toulouse Cinema, d/b/a Paris Theater, and against the UNITED STATES OF AMERICA, dismissing all counts contained in the indictment as to said defendants."

New Orleans, Louisiana, this 11th day of December,
1975.

*/s/ R. BLAKE WEST
UNITED STATES
DISTRICT JUDGE*

DATE OF ENTRY DEC. 12, 1975

[Filed: Dec. 11, 1975]

APPENDIX E

SUPREME COURT OF THE UNITED STATES

No. A-544

GEORGE PERKINS ECHOLS AND
INTERNATIONAL THEATRES UNLIMITED, INC.,
Petitioners.

versus

UNITED STATES

**ORDER EXTENDING TIME TO FILE PETITION FOR
WRIT OF CERTIORARI**

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including Feb. 18, 1977.

/s/ Lewis F. Powell
Associate Justice of the
Supreme Court of the
United States

Dated this 6th day of January, 1977.

APPENDIX F

USA 75-0922
kam

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

**INDICTMENT FOR INTERSTATE TRANSPORTA-
TION OF OBSCENE MATERIAL**

UNITED STATES OF AMERICA CRIMINAL DOCKET NO. 75-359

V.
GEORGE P. ECHOLS;

ALLEN P. DUPLECHIN;

INTERNATIONAL THEATERS

UNLIMITED, INC., d/b/a

Toulouse Cinema;

ARTHUR H. MOROWITZ;

HOWARD FARBER;

DISTRIBPIX, INC.

SECTION: H
VIOLATION: 18 USC §1462 and §2

The Grand Jury charges that:

COUNT I

On or about March 18, 1975, in the Eastern District of Louisiana, GEORGE P. ECHOLS, ALLEN P. DUPLECHIN, INTERNATIONAL THEATERS UNLIMITED, INC., doing business as Toulouse Cinema, ARTHUR H. MOROWITZ, HOWARD FARBER, and DISTRIBPIX, INC., did knowingly bring into New Orleans, Louisiana, from the State of New York, by means of a common carrier, and did knowingly receive from the common carrier, obscene, lewd, lascivious, and filthy matter of an indecent character, to wit: a 35 mm motion picture film entitled "Cheese," depicting various acts of natural and unnatural sexual relations between persons of the same and opposite sexes, including acts of sexual intercourse, oral copulation, and sexual perversion; all in violation of Title 18, United States Code, Sections 1462 and 2.

A TRUE BILL:

/s/ BERMAN MAX WOITSCHEK
FOREMAN

30a

/s/ GERALD J. GALLINGHOUSE
GERALD J. GALLINGHOUSE
United States Attorney

/s/ JAMES CARRIERE
JAMES D. CARRIERE
First Assistant U.S. Attorney

/s/ CORNELIUS R. HEUSEL
CORNELIUS R. HEUSEL
Assistant United States Attorney
Chief, Criminal Division

/s/ DON M. RICHARD
DON M. RICHARD
Assistant United States Attorney

New Orleans, Louisiana
June 5, 1975

[Filed: June 5, 1975]

GRAND JURY RETURN

DATE: June 5, 1975

SECTION "D"

ASSIGNED CRIMINAL NO: 75-359

31a

ASSIGNED SECTION SECTION H
UNITED STATES OF AMERICA

versus

GEORGE P. ECHOLS; ALLEN P. DUPLECHIN; INTERNATIONAL THEATERS UNLIMITED, INC., d/b/a Toulouse Cinema, ARTHUR H. MOROWITZ; HOWARD FARBER; DISTRIBPIX, INC.

DON RICHARD, Assistant United States Attorney

On the motion of the United States Attorney, _____

IT IS ORDERED THAT:

Bond be set at \$ _____

The Bond Previously set is approved.

Summons Issue for INTERNATIONAL THEATERS UNLIMITED, INC., d/b/a Toulouse Cinema, DISTRIBPIX, INC.

CAPIAS Issue for GEORGE P. ECHOLS; ALLEN P. DUPLECHIN; ARTHUR H. MOROWITZ; HOWARD FARBER

[Filed: June 5, 1975]

USA 75-0920
kam

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

INDICTMENT FOR INTERSTATE TRANSPORTATION OF OBSCENE MATERIAL

UNITED STATES OF AMERICA CRIMINAL DOCKET NO. 75-360

v. SECTION: E
GEORGE P. ECHOLS: VIOLATION: 18 USC §1462 and §2
ALLEN P. DUPLECHIN;
INTERNATIONAL THEATERS
UNLIMITED, INC., d/b/a
Paris Theater;
CARLOS TOBALINA;
HOLLYWOOD INTERNATIONAL
FILMS

The Grand Jury charges that:

COUNT I

On or about February 18, 1975, in the Eastern District of Louisiana, GEORGE P. ECHOLS, ALLEN P. DUPLECHIN, INTERNATIONAL THEATERS UNLIMITED, INC., doing business as Paris Theater, CARLOS TOBALINA, and HOLLYWOOD INTERNATIONAL FILMS, did knowingly bring into New Orleans, Louisiana, from the State of California, by means of a common carrier, and did knowingly receive from the common carrier, obscene, lewd, lascivious, and filthy matter of an indecent character, to wit: a 35 mm motion picture film entitled "Sexual Ecstasy of the Macumba," depicting various acts of

natural and unnatural sexual relations between persons of the same and opposite sexes, including acts of sexual intercourse, oral copulation, and sexual perversion; all in violation of Title 18, United States Code, Sections 1462 and 2.

A TRUE BILL:

FOREMAN

/s/ **GERALD J. GALLINGHOUSE**
GERALD J. GALLINGHOUSE
United States Attorney

/s/ **JAMES CARRIERE**
JAMES D. CARRIERE
First Assistant U. S. Attorney

/s/ **CORNELIUS R. HEUSEL**
CORNELIUS R. HEUSEL
Assistant United States Attorney
Chief, Criminal Division

/s/ **DON M. RICHARD**
DON M. RICHARD
Assistant United States Attorney

New Orleans, Louisiana
June 5, 1975

[Filed: June 5, 1975]

USA 75-0536
kam

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

**INDICTMENT FOR INTERSTATE TRANSPORTA-
TION OF OBSCENE MATERIAL**

UNITED STATES OF AMERICA CRIMINAL DOCKET NO. 75-361

V.

SECTION G (E)

GEORGE P. ECHOLS; VIOLATION: 18 USC §1462 and §2
ALLEN P. DUPLECHIN;
INTERNATIONAL THEATERS
UNLIMITED, INC., d/b/a
Paris Theater;
JEFFREY LEE ECHOLS;
STAR TRECK THEATERS, INC.,
formerly d/b/a Venture
International, Inc.

The Grand Jury charges that:

COUNT I

On or about March 31, 1975, in the Eastern District of Louisiana, GEORGE P. ECHOLS, ALLEN P. DUPLECHIN, INTERNATIONAL THEATERS UNLIMITED, INC., doing business as Paris Theater, JEFFREY LEE ECHOLS, STAR TRECK THEATERS, INC., formerly doing business as Venture International, Inc., did knowingly bring into New Orleans, Louisiana, from the State of Georgia, by means of a common carrier, and did knowingly receive from the common carrier, obscene, lewd, lascivious, and filthy matter of an indecent character, to wit: a 35 mm motion

picture film entitled "Climax of Blue Power," depicting various acts of natural and unnatural sexual relations between persons of the same and opposite sexes, including acts of sexual intercourse, oral copulation, and sexual perversion; all in violation of Title 18, United States Code, Sections 1462 and 2.

A TRUE BILL:

/s/ BERMAN MAX WOITSCHEK
FOREMAN

/s/ GERALD J. GALLINGHOUSE
GERALD J. GALLINGHOUSE
United States Attorney

/s/ JAMES CARRIERE
JAMES D. CARRIERE
First Assistant U. S. Attorney

/s/ CORNELIUS R. HEUSEL
CORNELIUS R. HEUSEL
Assistant United States Attorney
Chief, Criminal Division

/s/ DON M. RICHARD
DON M. RICHARD
Assistant United States Attorney

New Orleans, Louisiana
June 5, 1975

[Filed: June 5, 1975]

USA 75-0921
kam

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

**INDICTMENT FOR INTERSTATE TRANSPORTA-
TION OF OBSCENE MATERIAL**

UNITED STATES OF AMERICA CRIMINAL DOCKET NO. 75-362
v. SECTION C
GEORGE P. ECHOLS; VIOLATION: 18 USC §1462 and §2
ALLEN P. DUPLECHIN;
INTERNATIONAL THEATERS
UNLIMITED, INC., d/b/a
Paris Theater;
W. R. JAMES;
GALAXY FILMS EXCHANGE, INC.

The Grand Jury charges that:

COUNT I

On or about March 21, 1975, in the Eastern District of Louisiana, GEORGE P. ECHOLS, ALLEN P. DUPLECHIN, INTERNATIONAL THEATERS UNLIMITED, INC., doing business as Paris Theater, W. R. James, and GALAXY FILMS EXCHANGE, INC., did knowingly bring into New Orleans, Louisiana, from the State of North Carolina, by means of a common carrier, and did knowingly receive from the common carrier, obscene, lewd, lascivious, and filthy matter of an indecent character, to wit: a 35 mm motion picture film entitled "Sweet Agony," depicting various acts of natural and unnatural sexual relations

between persons of the same and opposite sexes, including acts of sexual intercourse, oral copulation, and sexual perversion; all in violation of Title 18, United States Code, Sections 1462 and 2.

A TRUE BILL:

/s/ BERMAN MAX WOITSCHEK
FOREMAN

/s/ GERALD J. GALLINGHOUSE
GERALD J. GALLINGHOUSE
United States Attorney

/s/ JAMES CARRIERE
JAMES D. CARRIERE
First Assistant U. S. Attorney

/s/ CORNELIUS R. HEUSEL
CORNELIUS R. HEUSEL
Assistant United States Attorney
Chief, Criminal Division

/s/ DON M. RICHARD
DON M. RICHARD
Assistant United States Attorney

New Orleans, Louisiana
June 5, 1975

[Filed: June 5, 1975]

USA 74-1747
kam

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

**INDICTMENT FOR INTERSTATE TRANSPORTA-
TION OF OBSCENE MATERIAL**

UNITED STATES OF AMERICA CRIMINAL DOCKET NO. 75-363

V.	SECTION E
GEORGE P. ECHOLS;	VIOLATION: 18 USC §1462 and §2
ALLEN P. DUPLECHIN;	
INTERNATIONAL THEATERS	
UNLIMITED, INC., d/b/a	
Paris Theater;	
ROBERT W. McCLURE;	
MOTION PICTURE DISTRIBUTORS.	
d/b/a Variety Films	

The Grand Jury charges that:

COUNT I

On or about November 19, 1974, in the Eastern District of Louisiana, GEORGE P. ECHOLS, ALLEN P. DUPLECHIN, INTERNATIONAL THEATERS UNLIMITED, INC., doing business as Paris Theater, ROBERT W. McCLURE, and MOTION PICTURE DISTRIBUTORS, doing business as Variety Films, did knowingly bring into New Orleans, Louisiana, from the State of North Carolina, by means of a common carrier, and did knowingly receive from the common carrier, obscene, lewd, lascivious, and filthy matter of an indecent character, to wit: a 35 mm motion picture

film entitled "High Rise," depicting various acts of natural and unnatural sexual relations between persons of the same and opposite sexes, including acts of sexual intercourse, oral copulation, and sexual perversion; all in violation of Title 18, United States Code, Sections 1462 and 2.

A TRUE BILL:

/s/ **BERMAN MAX WOITSCHEK
FOREMAN**

/s/ **GERALD J. GALLINGHOUSE
GERALD J. GALLINGHOUSE
United States Attorney**

/s/ **JAMES CARRIERE
JAMES D. CARRIERE
First Assistant U. S. Attorney**

/s/ **CORNELIUS R. HEUSEL
CORNELIUS R. HEUSEL
Assistant United States Attorney
Chief, Criminal Division**

/s/ **DON M. RICHARD
DON M. RICHARD
Assistant United States Attorney**

New Orleans, Louisiana
June 5, 1975

[Filed: June 5, 1975]

USA 75-0535
kam

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

**INDICTMENT FOR INTERSTATE TRANSPORTA-
TION OF OBSCENE MATERIAL**

UNITED STATES OF AMERICA CRIMINAL DOCKET NO. 75-364

v.

SECTION H

GEORGE P. ECHOLS;
ALLEN P. DUPLECHIN;
INTERNATIONAL THEATERS
UNLIMITED, INC., d/b/a
Toulouse Cinema, and d/b/a
Paris Theater;
ARTHUR WEISBERG;
GAIL FILM DISTRIBUTORS, INC.

VIOLATION: 18 USC §1462 and §2

The Grand Jury charges that:

COUNT I

On or about March 21, 1975, in the Eastern District of Louisiana, GEORGE P. ECHOLS, ALLEN P. DUPLECHIN, INTERNATIONAL THEATERS UNLIMITED, INC., doing business as Toulouse Cinema, ARTHUR WEISBERG, and GAIL FILM DISTRIBUTORS, INC., did knowingly bring into New Orleans, Louisiana, from the State of Michigan, by means of a common carrier, and did knowingly receive from the common carrier, obscene, lewd, lascivious, and filthy matter of an indecent character, to wit: a 35 mm motion picture film entitled

"Strangers," depicting various acts of natural and unnatural sexual relations between persons of the same and opposite sexes, including acts of sexual intercourse, oral copulation, and sexual perversion; all in violation of Title 18, United States Code, Sections 1462 and 2.

COUNT II

On or about March 26, 1975, in the Eastern District of Louisiana, GEORGE P. ECHOLS, ALLEN P. DUPLECHIN, INTERNATIONAL THEATERS UNLIMITED, INC., doing business as Paris Theater, ARTHUR WEISBERG, and GAIL FILM DISTRIBUTORS, INC., did knowingly bring into New Orleans, Louisiana, from the State of Michigan, by means of a common carrier, and did knowingly receive from the common carrier, obscene, lewd, lascivious, and filthy matter of an indecent character, to wit: a 35 mm motion picture film entitled "Little Sisters," depicting various acts of natural and unnatural sexual relations between persons of the same and opposite sexes, including acts of sexual intercourse, oral copulation, and sexual perversion; all in violation of Title 18, United States Code, Sections 1462 and 2.

A TRUE BILL:

/s/ BERMAN MAX WOITSCHEK
FOREMAN

/s/ GERALD J. GALLINGHOUSE
GERALD J. GALLINGHOUSE
United States Attorney

/s/ **JAMES CARRIERE**
JAMES D. CARRIERE
 First Assistant U. S. Attorney

/s/ **CORNELIUS R. HEUSEL**
CORNELIUS R. HEUSEL
 Assistant United States Attorney
 Chief, Criminal Division

/s/ **DON M. RICHARD**
DON M. RICHARD
 Assistant United States Attorney

New Orleans, Louisiana
 June 5, 1975

[Filed: June 5, 1975]

USA 75-0922
 kam

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA CRIMINAL DOCKET NO. 75-359
 v. SECTION: "H"
 GEORGE P. ECHOLS;
 ALLEN P. DUPLECHIN;
 INTERNATIONAL THEATERS
 UNLIMITED, INC., d/b/a
 Toulouse Cinema;
 ARTHUR H. MOROWITZ;
 HOWARD FARBER;
 DISTRIBPIX, INC.

MOTION AND ORDER TO CONSOLIDATE

The United States of America moves for consolidation with case number 75-359 entitled United States v. George P. Echols, Allen P. Duplechin, International Theaters Unlimited, Inc., d/b/a Toulouse Cinema; Arthur H. Morowitz, Howard Farber and Distribpix, Inc., of the following cases for pre-trial matters only: (1) United States v. George P. Echols, Allen P. Duplechin, International Theaters Unlimited, Inc., d/b/a Paris Theater, Carlos Tobalina, Hollywood International Films, Criminal Docket No. 75-360, Section "E"; (2) United States v. George P. Echols, Allen P. Duplechin, International Theaters Unlimited, Inc., d/b/a Paris Theater, Jeffrey Lee Echols, Star Trek Theaters, Inc., formerly d/b/a Venture International, Inc., Criminal Docket No. 75-361, Section "G" (E); (3) United States v. George P. Echols, Allen P. Duplechin, International Theaters Unlimited, Inc., d/b/a Paris Theater, W. R. James, Galaxy Films Exchange, Inc., Criminal Docket No. 75-362, Section "C"; (4) United States v. George P. Echols, Allen P. Duplechin, International Theaters Unlimited, Inc., d/b/a Paris Theater, Robert W. McClure, Motion Picture Distributors, d/b/a Variety Films, Criminal Docket No. 75-363, Section "E", and (5) United States v. George P. Echols, Allen P. Duplechin, International Theaters Unlimited, Inc., d/b/a Toulouse Cinema, and d/b/a Paris Theater; Arthur Weisberg, Gail Film Distributors, Inc., Criminal Docket No. 75-364, Section "H". Mover shows that:

I.

Case No. 75-360 "E" entitled United States v. George P. Echols, et al; No. 75-361 "E" entitled United States v.

44a

George P. Echols, et al; No. 75-362 "C" entitled United States v. George P. Echols, et al; No. 75-363 "E" entitled United States v. George P. Echols, et al, have all been transferred to Section "H" for pre-trial matters only.

II

Case No. 75-364 "H" entitled United States v. George P. Echols, et al, is presently allotted to Section "H".

III

Counsel of record for all defendants have agreed to the transfer and consolidation for pre-trial matters only.

IV

In the interest of judicial efficiency and economy, the Court should consolidate all of these matters for pre-trial matters only.

WHEREFORE, the United States of America moves for consolidation of cases numbered 75-360 "E"; 75-361 "E"; 75-362 "C"; 75-363 "E", and 75-364 "H" with case no. 75-359 "H" for pre-trial matters only.

New Orleans, Louisiana, this 22nd day of July, 1975.

Respectfully submitted,

GERALD J. GALLINGHOUSE
UNITED STATES ATTORNEY

45a

/s/ DON M. RICHARD
DON M. RICHARD
Assistant United States
Attorney
500 St. Louis Street
New Orleans, Louisiana 70130
Telephone: (504) 589-2921

ORDER

CONSIDERING the foregoing motion of the United States of America;

IT IS ORDERED that Cases Numbered 75-360 "E" entitled United States v. George P. Echols, et al; 75-361 "E" entitled United States v. George P. Echols, et al; 75-362 "C" entitled United States v. George P. Echols, et al; 75-363 "E" entitled United States v. George P. Echols, et al; and 75-364 "H" entitled United States v. George P. Echols, et al, be and the same are hereby CONSOLIDATED with Case No. 75-359 "H" entitled United States v. George P. Echols, et al.

IT IS FURTHER ORDERED that the consolidation of these cases is limited to pre-trial matters.

IT IS FURTHER ORDERED that all pre-trial pleadings filed hereafter shall be captioned in accordance with Local Rule 2.7 of the General Rules of the United States District Court for the Eastern District of Louisiana.

IT IS FURTHER ORDERED that a copy of this order of consolidation be filed in each of the consolidated cases.

New Orleans, Louisiana, this 24th day of July, 1975.

/s/ R. BLAKE WEST
UNITED STATES
DISTRICT JUDGE

CERTIFICATE

I hereby certify that on this 22nd day of July, 1975, a copy of the foregoing MOTION AND ORDER TO CONSOLIDATE has been served upon defendants, through counsel of record, by placing same in the U. S. Mail, postage pre-paid.

/s/ DON M. RICHARD
DON M. RICHARD
Assistant United States
Attorney

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS, LOUISIANA, OCTOBER 15 AND
NOVEMBER 12, 1975.

APPEARANCES:

FOR THE UNITED STATES:

Don M. Richard, ESQ.
ROBERT J. BOITMANN, ESQ.
Assistant United States Attorneys

FOR THE DEFENDANTS:

WILLIAM M. LUCAS, JR., ESQ.
MICHAEL SILVERS, ESQ.

PAUL W. WILLIAMS, C.S.R.
Official Court Reporter
Registered Professional Reporter
323 Hale Boggs Federal Building
500 Camp Street
New Orleans, Louisiana 70130

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The Honorable James D. Carriere	65

[Pages 2-29 (Proceeding of October 15, 1975) are omitted from this transcript by Petitioners as unnecessary to this Petition for Writ of Certiorari. Testimony omitted is oral argument of counsel on other pre-trial Motions filed by Petitioners in these matters.]

[30] . . . Section "H" cases are concerned. Frankly, I will have to confer with the other Judges as to what

their preferences might be. I certainly would rather not try all the cases myself.

Court will stand adjourned.

(Court adjourned)

PROCEEDINGS OF NOVEMBER 12, 1975.

THE COURT:

Call the matter before the Court, please.

THE COURTROOM DEPUTY:

Criminal Docket No. 75-359, and Consolidated Cases, United States of America versus George P. Echols and others.

Mr. RICHARD:

The Government is here and is ready to proceed. Don Richard and Bob Boitmann for the United States of America, Your Honor.

MR. LUCAS:

May I first request sequestration of witnesses?

THE COURT:

Any witnesses in the Courtroom, please step outside in the hallway. Do not discuss your testimony with anyone either before or after you testify.

MR. LUCAS:

May it please the Court, this is an evidentiary hearing in connection with a motion filed on behalf of the

Defendants George Echols and International Theaters, Unlimited, Incorporated, in connection with whether the Grand Jury hearing was held in accordance with Rule 6(d) [31] of the Federal Rules of Criminal Procedure, as to whether there were unauthorized persons present during the course of the Grand Jury hearings which would of necessity result in the dismissal of the indictments that were rendered.

Your Honor will recall that a motion to suppress was granted in three of the cases, I think, presently three before the Court.

MR. RICHARD:

For the record, Your Honor, two cases and one count of another case, actually.

MR. LUCAS:

Yes, I think you are correct.

Now, Your Honor, before we proceed, one portion of Your Honor's memorandum and order in this cause directed the United States Attorney to respond to interrogatory number eleven of our motion for particulars as to evidence presented to the Grand Jury pursuant to Rule 6(e), which asks for transcripts of all evidence taken before the Grand Jury which would tend to reflect the names and capacities of all persons not members of the Grand Jury present at the hearings and the showing of films which led to the indictments in each of the above cases, and I would at this time, before we begin this hearing, call upon the United States Attorney to respond to that interrogatory, with the Court's permission.

MR. RICHARD:

I will be glad to respond to this. However, the minutes of the Grand Jury do not show who was present during the showing of the films. The Grand Jury was [32] transported or physically transported themselves to a viewing room area, and the minutes were not kept of that particular viewing of the film. In other words, just the films were shown to the Jury, and that was it. There are no records which indicate who was present and who was not present. We will so respond in writing.

MR. LUCAS:

Now, Your Honor, Mr. Richard made his appearance in our last hearing, and I would ask if the Court would be so good as to inquire as to whether anything, even though it wasn't transcribed, whether the files of the United States Attorney's Office reflect, and I think under the Brady rule we are entitled to know if there were other persons present, as to whether they have any records of any kind which reflects who was present, other than the members of the Grand Jury.

MR. RICHARD:

We have no records which reflect anything of that nature, and I presume the reason for this hearing is that we will obtain from witnesses who was there and who was not there, and we have no records which show anyone being present or not being present.

MR. LUCAS:

Well, my only point is I want any — certainly they know the United States Attorney who was there. I —

MR. RICHARD:

I am going to call him as a witness.

MR. LUCAS:

So Counsel is saying there were no [33] unauthorized persons there, apparently. In that case, Your Honor, we are ready to begin.

THE COURT:

Call your first witness.

LLOYD MONTREUIL,

having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. LUCAS:

Q State your name, please.

A Lloyd Montreuil.

Q What is your occupation, sir?

A I guess by trade you might say I am a projectionist.

Q What are you presently doing?

A I am in the audio-visual business, and I also do work for the ABC Screening Room.

Q Is that located in the LaSalle Hotel next to the Saenger Orleans Theater in the City of New Orleans?

A Yes, it is.

Q Now, Mr. Montreuil, on May 20, 1975, did you have occasion to show certain films to the United States Grand Jury?

A Yes, I did.

Q Where did that take place?

A That took place at the LaSalle Screening Room, or ABC Screen Room.

Q Do you recall that one of the films was a film [34] named HIGH RISE?

A Yes.

Q Would you recall how many films there were?

A Seven.

Q Was one a film called STRANGERS?

A Yes.

Q And one called CHEESE?

A Yes.

Q Was one a film called SWEET AGONY?

A Right.

Q Was one a film called LITTLE SISTERS?

A Right.

Q Was one film called CLIMAX OF BLUE POWER?

A Right.

Q And the last was a film called SEXUAL ECSTASY OF THE MACUMBA?

A Right.

Q Now, how and by whom were you first contacted in connection with acting as the projectionist for the showing of these films?

A Well, the desk at the LaSalle Hotel makes arrangements for the booking of the screening room.

Q So someone at the LaSalle Hotel contacted you?

A The desk clerk, right.

Q And asked you what?

[35] A Told me there would be a screening for the Jury, it would be all day, and to prepare myself to be there all day, and I said, "All right."

Q Did you in fact then go to the ABC Screening Room in the LaSalle Hotel on May 20, 1975?

A Yes, I did.

Q At what time did you arrive, sir?

A I got there about seven thirty.

Q Was anyone else there when you got there?

A No.

Q At what point in time did other persons arrive?

A It was around eight o'clock or so, eight o'clock, eight fifteen.

Q Would you tell the Court what happened around eight or eight fifteen.

A They brought the film upstairs, and about four or five men, I believe, was with the film, along with the porter who carried the films upstairs. They brought the film upstairs, the porter brought the film upstairs accompanied by four or five men with the film.

Q Do you know who these men were, or who they were with? In other words, —

A No, I did not know at the time, no.

Q Have you seen any of those men here today outside the Courtroom?

[36] A Yes, uh-huh.

Q What color suit was the man you saw wearing? Do you remember?

A A tan, a light-colored suit.

Q Was he one of the men who were excused when the witnesses were excused just now?

A Yes.

Q And he was one of the men who brought the — who was with the porter when the films were brought up?

A I believe — yes, he was with the films.

Q You said there were about how many men, sir, other than the porter?

A Well, four or five with the film, I believe.

Q Where were these four or five men during the course of the showing of the films?

A They were around the screening room area. I don't know exactly how many, but some of them were there.

Q When you say "Around the screening room area," —

A Within the theater itself or by the back door, the projection door or in the booth. They were not in the booth with me all the time, you know, but at times they were in there to be sure that things were running all right.

Q Was the man in the light-colored suit that you referred to one of the men that was in the screening room?

A I believe it was, yeah. I am pretty sure he was. [37] I don't recall it, but I think he was.

Q Mr. Montreuil, for the assistance of the Court and Counsel, I'm going to give you a couple of sheets of paper. You probably will only need one, but just in case you mess one up, here is an extra one, and here is a pencil. I will write in the lower right-hand corner "Defense No. 1." I would like you to please draw a diagram that will show for us the screening area. There is a projection booth, is there not?

A Yes.

Q There is a hallway outside, isn't there?

A Yes, sir.

Q Is the doorway leading from the hallway to the projection booth?

A Right.

Q Would you please draw the various things, and as you draw tell me what you are drawing, and we will give a label to it so we will be able to identify it.

A This is the left wall. This is the front where the screen is, and a fire exit where all of the controls are.

Q Now, would you mark "Screen" where the screen is.

A Yes, right here (indicating). This is the air-conditioning system, the controls for the curtains, the speakers, everything within the theater itself.

Q Would you kindly label that "Air-conditioning," [38] et cetera.

A Yes (witness complies).

Q Would you continue, please.

A This is the right wall, this is the rear wall, and this is the back wall of the projection room itself. This area here is the booth and the entrance to the booth is right here. This here is the entrance to the screening room, and there is a foyer like this and the elevators are here, and this is the complete foyer area right here (indicating).

Q Is this actually a door or something?

A This is the entrance to the screening room.

Q Could you maybe erase this line? That is —

A There is a door here, yes.

Q Now, the entrance to the screening room, would you please label that "A."

A All right (witness complies).

Q Thank you.

MR. LUCAS:

Let the record show that the witness has marked it with an "A."

EXAMINATION BY MR. LUCAS:

Q You have placed an arrow on here. Would you please put a "B" by the arrow, and that designates —

A The door to the —

Q The door to the projection room?

A The room itself, right.

[39] Q Would you please write the words "Projection booth" in the area that constitutes the projection booth.

A (Witness complies)

Q May I assume that in the screening room itself there are seats or a theater-type arrangement?

A Right, thirty-seven.

Q How many rows of seats are there?

A There are only three seats in each row.

Q For persons viewing the screen, how many seats are there?

A There would be one, two, three and an aisle, and then one, two, three.

Q How many rows are there?

A Well, it is totally thirty-seven.

Q Thirty-seven rows?

A Thirty-seven seats total, so it would be maybe six rows. There was one row in the back with the center seat facing the screen. If you walk down the aisle you would hit the seat.

Q This long arrow that you have down here, please write the word "Aisle" here.

A (Witness complies)

Q The dashes indicate the seats?

A Yes, three in each row.

Q What did you mention about the back row?

[40] A The back row was one extra seat which instead of having a total of six across, there are seven. The middle seat is where the aisle is. In other words, if you walk from the seat to the back of the booth, you walk into this seat, you know, from the screen.

Q Where is the back row that has the seven seats on it in relation to the projection booth wall?

A Right against it.

Q It is right against the wall?

A Yes.

Q Now, Mr. Montreuil, did you, during the showing — incidentally, how long did the showing of these films take?

A All day.

Q At what time, approximately, did you finish showing all the films?

A Around five thirty.

Q Was there any break during the —

A There was lunch.

Q There was a break during the showing of the seven films for lunch?

A Yes.

Q About how long was the break?

A About forty-five minutes to an hour.

Q While the films were in progress, that is, while they were being shown to the Grand Jury, did you have any [41] occasion yourself to be in the screening room proper as distinguished from the projection booth?

A Once.

Q What was the occasion for that?

A To adjust the air-conditioning system behind the screen.

Q Then in order to do that, you would go from the projection room, you would go from the projection room through the door marked "B" with an arrow by it, walk toward the back and go behind the screen where you have marked "Air-conditioning, et cetera." Is that correct?

A Yes.

Q Was the film being shown while you did that?

A Yes, it was.

Q Was the Grand Jury in that room when you did that?

A Yes, they were.

Q Now, Mr. Montreuil, do you know where the Grand Jury was sitting in that theater, in that screening room?

A Most of them on the back row. That's where the ladies were.

Q When you say "On the back row," you are referring to the row that you just testified to which is up against the screening wall? Do you mean up against the wall, not the screening wall, but up against the wall of the projection booth?

[42] A The back row, yes.

Q Is that correct?

A Yes.

Q Now, Mr. Montreuil, I assume that with the motors and so forth — incidentally, let me first ask you — excuse me. The door to the projection booth, is the door left open or shut?

A It's left open.

Q I would assume that with the projection machine going, it was rather noisy. Is that correct?

A The equipment, yes, it makes a little noise.

Q So while it is going, I suppose it would be impossible to hear what was going on outside, if you were in the room. Is that correct?

A Right. You couldn't hear anything outside, no. I mean, as far as a conversation going on, no.

Q If the machines were off and if you wanted to, could you hear conversations on the back row of people sitting — conversations of people sitting on the back row of that screening room?

A Yes, uh-huh.

Q Mr. Montreuil, you referred to some four men who came with the porter. Is that correct?

A Right.

Q They brought the film?

[43] A Right.

Q Now, during the day were these — tell us, were these four men there all during the day or part of the day, or what do you recall about these four men?

A There were some men around, yes. They were in the screening room, but exactly how many I don't know, but there were some around who stayed in the screening room area, meaning either the hallway to the projection room or the theater itself or the projection room.

Q Now, when you say the hallway itself, are you referring to the hallway outside the projection booth?

A The hallway within the screening room.

Q Within the screening room, all right. Did you notice, during the course of the showing of these films, did people just sit there the whole time, or did people excuse themselves to go to the restroom or what-have-you? What happened during the day? Tell us what happened with regard to their comings and goings.

A Well, people did excuse themselves to go to the restroom, uh-huh.

Q And when we say "People," who are we talking about?

A Those on the Jury. There were ladies — most of them were ladies.

Q This was while the films were being shown?

A Right.

[44] Q When they excused themselves, they left the screening room area and walked through the hallway past the door leading to the projection room?

A Right.

Q Into the foyer. Is that correct?

A Right, to the restroom.

Q I think you said that doorway was left open.

A In the projection room, not the door to the hallway in the outer lobby, yes.

Q But the door to the projection room?

A Yes. It is always left open for most screenings.

Q Did you have reason to believe that any of the people who were with the porter were F.B.I. agents?

A Well, who they were or who they were with, I don't know. I would assume they were. I don't —

Q But are these the people that you are referring to, that you have referred to in your prior testimony as distinguished from the Grand Jury?

A Right, yes.

Q How could you tell that these people weren't members of the Grand Jury?

A Well, they brought the films up.

Q They brought the films up?

A Yes.

Q Was the Grand Jury sitting to themselves?

[45] A Well, they were kind of scattered. They weren't sitting with themselves, no.

Q But some were sitting in the back row, you said?

A Right.

Q Mr. Montreuil, is it possible — listen to my question. Is it possible for someone other than you — in other words, could you put the reels on the projector and someone else run the machine?

A That's possible.

Q But it would take you to put the reels on, wouldn't it?

A Oh, yes.

Q Were you sworn to secrecy in any way, sir?

A No.

Q Were you given any instructions at all apart from running the films and what order to show them in?

A Just what order to show them in and I just followed my instructions.

MR. LUCAS:

Your Honor, I believe I am just about through. I wonder, Your Honor, if we can ask the Marshal to get the other witnesses outside and have them brought into the Courtroom so this gentleman could identify them.

THE COURT:

Would you ask the other possible witnesses to step inside the door, Marshal.

(Whereupon, the prospective witnesses entered the Courtroom)

[46] EXAMINATION BY MR. LUCAS:

Q Would you point to the gentleman you say you did recognize as being the one —

A The one on the right, that was — he was with the film.

Q This gentleman right here?

MR. BACON:

Rick Bacon.

MR. LUCAS:

No further questions. I would like to — if I can find it, I would like to offer the diagram.

THE COURT:

Let the diagram marked for identification "Defendant No. 1" be admitted into evidence as "Exhibit Defendant No. 1."

EXAMINATION BY MR. RICHARD:

Q Mr. Montreuil, my name is Don Richard and I am an Assistant United States Attorney. I'm going to ask you a few questions, O.K.?

A Yes.

Q What size films were these that you showed to the Grand Jury that day?

A Thirty-five millimeter.

Q What type of projector did you have to use for that?

A A thirty-five millimeter sound motion picture projector.

Q How big is that projector?

A Oh, about eight feet high and maybe four or five [47] feet long.

Q Are you a member of a union?

A Yes.

Q What union is that?

A 293.

Q Does your union have any rules about who can show films in a viewing room?

A Yes, they do.

Q What are the rules, if you know?

A There has to be a union man, a union projectionist, if they have a contract, the theater has a contract with the union.

Q Mr. Lucas asked you if you could have set these reels on the projector and let someone, like myself, for instance, run it. Suppose I would have been there. Could you have shown me how to turn it on, and do your rules allow me to do that, even that much?

A No, they don't.

Q You have to run the projector as well as set it up, don't you?

A Yes, according to the union.

Q In addition to showing the films, did you do anything else in front of the Grand Jury? When you showed the film, did you do anything else besides show the film to the Jury?

[48] A No, I didn't.

Q Did you talk to the Jury?

A No.

Q Did you go out in front of the Jury and say you were a witness?

A No.

Q Were you sworn as a witness?

A No.

Q Did you overhear anything the Jury said while they were viewing the films?

A No.

Q Did you go in the room and sit down and tell the Jury about the film and what it meant?

A No.

Q Other than the one time when you went to check the air-conditioning, were you ever in the room with the Jury when you were showing the films?

A No.

Q You confined yourself to the projection room area?

A Yes, I did.

Q Now, can you see from the projection room area what is being shown on the screen?

C A Oh, sure.

Q Did you watch the entire amount of films, or did you just —

[49] A Well, you almost have to, because if anything goes wrong you would not know, so you have to watch the film.

Q Did you make any comments to the Jurors on

that day? Did you ever see any Juror on the street and say "Hey, what about the films?" or anything like that?

A No.

Q Have you ever seen one of the Jurors since that day?

A I have not.

Q You testified that the films were brought in, placed in a hallway. This hallway, I take it, is a little hallway that runs alongside of the projection booth area?

A Right.

Q They were brought in by the porter of the Canal-LaSalle Hotel, I presume?

A Right.

Q With some agents?

A Yes, I assume.

Q One of them you identified as Agent Bacon?

A Right.

Q Did you know the other people besides Agent Bacon that were helping tote the films up?

A I did not know any of the gentlemen. I don't even try —

Q Could the other people have been assistants to [50] Mr. Bacon, assisting him?

A It's possible.

Q You testified something about these four or five men, and that they were in the area of the viewing room during the showing of the films. Now, it becomes extremely important that you search your memory very carefully to make sure that you are absolutely correct about this. Agent Bacon, you have identified him as one of the men.

A Right.

Q Was he in the viewing room at any time with the Jury? I am not talking about the projection room, but the viewing —

A The viewing area?

Q With the Jury.

A I can't honestly say he was or wasn't.

Q Any of the other three or four men that were with Mr. Bacon, can you swear under oath that you saw them go in and sit down in the viewing room with the Grand Jury?

A I am pretty sure there was someone sitting in the area.

Q Do you know Mr. James Carriere, the Assistant United States Attorney?

A No.

Q Did you meet him that day?

A No, I really did not meet anyone.

[51] Q Do you know Mr. John Musser, the Assistant United States Attorney?

A No.

Q Do you know Mr. Bob Habans, the Assistant United States Attorney?

A No.

Q If I were to tell you that all of those three men at any given period of time, as Assistant United States Attorneys, were there, could you say that you recognized them in any way, shape or form?

A I might. I would have to see them, but the reason why I know there were people there, someone had to be there with the films with me. I had questions to ask, you know.

Q Well, Agent Bacon you identified. Did you ask him questions about the films?

A I am sure I did. I usually do, like what reels. Some of the reels were kind of bad. They needed patch-

ing. I didn't want to do anything to the films until I discussed it with someone first.

Q Were these films marked with stickers and said "Evidence, Federal Bureau of Investigation," the canister?

A That I do not remember.

Q When you say Agent Bacon stayed around, or was around the area, do you know if he went and stood and saw the — if this is the projection booth right here and this is the [52] little hallway, this area out here is the viewing room, Agent Bacon could have stood right here and looked at the films for a moment, couldn't he, and he would have been out of your view, wouldn't he?

A It is possible, yes.

Q In reference to thirty-five millimeter films, are they available — are you familiar with sixteen millimeter projectors?

A Very.

Q Sixteen millimeter projectors are what I consider to be very portable in the sense that you can carry them around from place to place and not give yourself any problems with lifting them. Is that correct?

A Yes.

Q Are there any small thirty-five millimeter projectors like that?

A Yes, there are.

Q Do you have any available to you?

A Yes, I do.

Q Are those easier to operate than the large thirty-five millimeter projector?

A No, they are not, not really, just different lamp houses, that's all.

Q How much does a thirty-five millimeter projector cost, the portable type you just talked about?

[53] A Well, the portable kind, they run around, I'd say, around \$5,000 each, around that.

Q You gave some testimony about the Grand Jury. Did you meet each one of the Jurors? Were you introduced to them?

A No, I was not.

Q How did you know who was a Grand Juror and who was not?

A Because of the gentlemen who brought the films up in the beginning.

Q What did he tell you?

A What did they tell me?

Q Yes.

A "Here are the films," and they gave me which order, and we started according to the films, to the order, and I started it.

Q What he told you was there would be a Grand Jury watching the film?

A Yes.

Q And when these people came in, you weren't introduced as the projectionist?

A No.

Q The Grand Jury filed into the room and sat down?

A Correct.

Q And other people you say came in could have been Assistant United States Attorneys? You don't know any of them, [54] do you?

A No, I don't know.

MR. RICHARD:

That's all I have. Thank you.

EXAMINATION BY MR. LUCAS:

Q Mr. Montreuil, when these persons who brought

the films at various times were outside the projection booth — you testified at times they were outside of the projection booth?

A Yes.

Q Would they have a clear view of the screen?

Could they see the pictures from outside?

A Oh, yes.

Q They could?

A Yes.

Q They could see the actual films being shown?

A Yes.

Q You mentioned the Grand Jurors got up to go to the restroom or for other reasons during the course of showing of the film. Is that correct?

A Right.

Q And in doing so, would they of necessity have to see the agent that was standing outside the projection booth?

A Yes. There was one standing there, yes.

MR. LUCAS:

No further questions.

MR. RICHARD:

Nothing further of this witness.

[Pages 55-84 are omitted from this transcript as unnecessary to this Petition for Writ of Certiorari. Testimony omitted is:

- a) pp. 55-65 — testimony of Mr. Rick Bacon, Special Agent of F.B.I.,
- b) pp. 65-78 — testimony of the Honorable James D. Carriere, United States

Magistrate for the Eastern District of Louisiana who, at the time of the first Grand Jury Proceeding, was First Assistant to the United States Attorney for the Eastern District of Louisiana, and

- c) pp. 78-84 — oral argument of counsel.]

[85]

CERTIFICATE

I, PAUL W. WILLIAMS, Official Court Reporter in the United States District Court, Eastern District of Louisiana, do hereby certify the above and foregoing is true and correct as taken by me on October 15 and November 12, 1975.

/s/ PAUL W. WILLIAMS
PAUL W. WILLIAMS
Official Court Reporter
Section "H"

APPENDIX H

GRAND JURY RETURN

DATE: NOVEMBER 25, 1975

SECTION "F"

ASSIGNED CRIMINAL NO: 75-359

ASSIGNED SECTION H

70a

UNITED STATES OF AMERICA

versus

GEORGE P. ECHOLS; ALLEN P. DUPLECHIN; INTERNATIONAL THEATERS UNLIMITED, INC.

ROBERT BOITMAN

DON RICHARD Assistant United States Attorney

On the motion of the United States Attorney, IT IS ORDERED THAT THE ORIGINAL INDICTMENT PREVIOUSLY FILED IN THIS CASE IS HEREBY DISMISSED BY THE COURT. AND IT IS FURTHER ORDERED THAT THE SUPERSEDING INDICTMENT BE FILED INTO THE ORIGINAL CASE #75-359 "H".

IT IS ORDERED that:

Bond be set at \$ _____

The Bond Previously set is approved.

Summons Issue for _____

CAPIAS Issue for _____

[Filed: Nov. 25, 1975]

71a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SUPERSEDING
INDICTMENT FOR INTERSTATE TRANSPORTA-
TION OF OBSCENE MATERIAL

UNITED STATES OF AMERICA CRIMINAL DOCKET NO. 75-359

v.

GEORGE P. ECHOLS;
ALLEN P. DUPLECHIN;
INTERNATIONAL THEATERS
UNLIMITED, INC.

VIOLATION: 18 USC §1462 and 2

The Grand Jury charges that:

COUNT I

On or about November 19, 1974, in the Eastern District of Louisiana, GEORGE P. ECHOLS, ALLEN P. DUPLECHIN, INTERNATIONAL THEATERS UNLIMITED, INC., doing business as Paris Theater, did knowingly bring into New Orleans, Louisiana, from the State of North Carolina, by means of a common carrier, and did knowingly receive from the common carrier, obscene, lewd, lascivious, and filthy matter of an indecent character, to wit: a 35 mm motion picture film entitled "High Rise," depicting various acts of natural and unnatural sexual relations between persons of the same and opposite sexes, including acts of sexual intercourse, oral copulation, and sexual perversion; all in violation of Title 18, United States Code, Sections 1462 and 2.

COUNT II

On or about March 18, 1975, in the Eastern District of Louisiana, GEORGE P. ECHOLS, ALLEN P. DUPLECHIN, INTERNATIONAL THEATERS UNLIMITED, INC., doing business as Toulouse Cinema, did knowingly bring into New Orleans, Louisiana, from the State of New York, by means of a common carrier, and did knowingly receive from the common carrier, obscene, lewd, lascivious, and filthy matter of an indecent character, to wit: a 35 mm motion picture film entitled "Cheese," depicting various acts of natural and unnatural sexual relations between persons of the same and opposite sexes, including acts of sexual intercourse, oral copulation, and sexual perversion; all in violation of Title 18, United States Code, Sections 1462 and 2.

COUNT III

On or about March 21, 1975, in the Eastern District of Louisiana, GEORGE P. ECHOLS, ALLEN P. DUPLECHIN, INTERNATIONAL THEATERS UNLIMITED, INC., doing business as Paris Theater, did knowingly bring into New Orleans, Louisiana, from the State of North Carolina, by means of a common carrier, and did knowingly receive from the common carrier, obscene, lewd, lascivious, and filthy matter of an indecent character, to wit: a 35 mm motion picture film entitled "Sweet Agony," depicting various acts of natural and unnatural sexual relations between persons of the same and opposite sexes, including acts of sexual intercourse, oral copulation, and sexual perversion; all in violation of Title 18, United States Code, Sections 1462 and 2.

A TRUE BILL:

/s/ **ALVIN S. COYAT**
FOREMAN

/s/ **GERALD J. GALLINGHOUSE**
Gerald J. Gallinghouse
United States Attorney

/s/ **ROBERT N. HABANS, JR.**
Robert N. Habans, Jr.
Assistant United States Attorney
Chief, Criminal Division

/s/ **ROBERT J. BOITMANN**
Robert J. Boitmann
Assistant United States Attorney

New Orleans, Louisiana
November 25, 1975

[Filed: Nov. 25, 1975]

APPENDIX I

[1] **UNITED STATES GRAND JURY**
NEW ORLEANS, LOUISIANA

Proceedings before the Ladies and Gentlemen of the United States Grand Jury, at the La Salle Hotel, 1113 Canal Street, New Orleans, Louisiana, on Tuesday, November 25, 1975.

APPEARANCES:

Don Richard, Esq.
Assistant U. S. Attorney

Robert J. Boitman, Esq.
Assistant U. S. Attorney

REPORTED BY:

Julianne W. Andressen, Certified Shorthand
Reporter in and for the State of Louisiana.

[2]

PROCEEDINGS**LLOYD MONTREUIL**

after having been first duly sworn, testified as follows:

EXAMINATION BY MR. BOITMAN:

Q Would you state your name for the ladies and gentlemen.

A Lloyd Montreuil.

Q And, sir, what is your occupation?

A I am an audio-visual advisor.

Q And what is your purpose here today?

A To project these films.

Q Are you licensed as a projectionist?

A I am in the Local Union here, yes.

Q And what type of projector are you going to use to project these film?

A Thirty millimeter sound motion picture projector.

Q Is this a complicated piece of machinery?

A Yes, it is.

Q And have you been trained to use this particular piece of machinery?

A Yes.

[3] Q Then, in this particular theater, which is the Viewing Room of the La Salle Hotel, who is allowed to operate this projector?

A Only those associated with the ABC and the Local Union.

Q And are you associated with ABC?

A Yes.

Q What is that?

A American Broadcasting Company, which owns Saenger and Saenger Orleans.

Q Are you also associated with the Local Union?

A Yes, 293.

Q And what is the full designation?

A Full what?

Q Designation of the Union.

A What do you mean?

Q It is No. 293 what?

A Just 293. The whole thing is Stage — I don't know what the whole thing is, it's the MP something, stage, projectionist, lighting, the whole thing.

Q And have you received the films from me that you are to show here today?

A Yes, I have.

[4] Q And are you going to show those films in their entirety?

A Right.

MR. BOITMAN:

I have no further questions now.

MR. RICHARD:

I would like the record to reflect that the Jury viewed the film "Cheese" from approximately 9:30 to 10:35

this morning, at which time the only people present in the Jury Room were the Jurors and Assistant U. S. Attorney Boitman and occasionally Assistant U.S. Attorney Richard. And the projectionist remained in the projection booth after being sworn and projected the film. The Jury then went back to the courthouse and worked on two other indictments, and are returning at quarter of two from lunch to continue viewing the next two films.

I will ask the Court Reporter to step out and return to us about four o'clock.

(Whereupon, the Court Reporter left the Viewing Room).

[5] MR. RICHARD:

I would like to reflect that the Court Reporter was asked to step back in at ten to four. The Jury has now viewed all three of the films, and I would ask the projectionist to step here, please.

LLOYD MONTREUIL

having been previously sworn, testified as follows:

EXAMINATION BY MR. RICHARD:

Q Mr. Montreuil, you are reminded that you were sworn before beginning the showing of the films. Have you shown the films that the Assistant U. S. Attorney Boitman asked you to show to the Jury?

A Yes, I have.

Q You showed all three reels of all three film?

A All three reels of all three films.

Q And you do realize this is secret, so, you should not discuss what you saw here with anyone?

A Correct.

MR. RICHARD:

Thank you very much.

[6]

CERTIFICATE

I, Julianne W. Andressen, do hereby certify that the within proceedings were taken down in shorthand (STENOGRAPH) by me, and reduced to typewriting under my personal supervision on November 25, 1975, and that the foregoing typewritten matter constitutes a true and correct transcription of my stenographic notes taken at that time in the captioned cause.

/s/ JULIANNE W. ANDRESSEN
REPORTER

APPENDIX J

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

UNITED STATES OF AMERICA
VS.
GEORGE P. ECHOLS, ET AL

CRIMINAL ACTION
NO. 75-359
SECTION "H"

STIPULATION

IT IS STIPULATED between the Government and Defendants, GEORGE P. ECHOLS and INTERNATIONAL THEATRES UNLIMITED, INC. for the purpose of this Motion:

I.

That when the Grand Jury viewed the three (3) films forming the three (3) counts of this indictment the only persons present with the Grand Jury were two Assistant United States Attorneys and the projectionist, LLOYD MONTREUIL.

II.

That the location of the viewing of evidence was the same location as that occupied by the first Grand Jury that viewed the films forming the basis of the original indictment (U.S.D.C. Case numbers 75-359, et al).

III.

In this Grand Jury session LLOYD MONTREUIL was sworn as a witness and testified as indicted in the copy of the transcript which is attached hereto and made a part hereof.

SUBMITTED BY:

/s/ ROBERT J. BOITMANN
ROBERT J. BOITMANN
Assistant United States
Attorney

/s/ WILLIAM M. LUCAS, JR.
WILLIAM M. LUCAS, JR.
Attorney for Defendants,
GEORGE P. ECHOLS
and INTERNATIONAL
THEATRES UNLIMITED, INC.